

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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**Kevin Lee Black,**

**Civil No. 06-3305 (JMR-JJG)**

Plaintiff,

v.

**Michelle Johnson, et al.,**

Defendants.

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**REPORT  
AND  
RECOMMENDATION**

JEANNE J. GRAHAM, United States Magistrate Judge

The above matter comes before the undersigned on a motion, by plaintiff Kevin Black, for a temporary restraining order (Doc. No. 5). Mr. Black is representing himself. The defendants are represented by Mark B. Levinger, Assistant Minnesota Attorney General.

Mr. Black brings action under 42 U.S.C. § 1983 in connection with his imprisonment in Minnesota prisons. He asserts that the defendants, various prison officials, violated his rights by denying his reclassification and placement in a lower-security prison. His motion for a temporary restraining order is referred to this Court under 28 U.S.C. § 636(b) and Local Rule 72.1(b). Because the defendants have answered this motion, it is appropriately treated as a motion for a preliminary injunction under Rule 65(a).

Where a plaintiff's claims have no likelihood of success on the merits, then a court cannot grant an injunction. *Newton County Wildlife Ass'n v. U.S. Forest Serv.*, 113 F.3d 110, 113 (8th Cir. 1997). Because there is no recognized liberty interest in placement at a particular prison facility, Mr. Black fails to state a claim here. *Meachum v. Fano*, 427 U.S. 215, 224 (1976). For this reason, he cannot obtain a preliminary injunction, and his motion is appropriately denied.

It should also be noted that, according to the record in this matter, Mr. Black was scheduled to be released from custody on May 21, 2007. (Aff. of J. Lyons, Jan. 25, 2007, at 5.) That date has passed but the parties have not indicated whether Mr. Black remains in custody. If not, this motion may be moot. But in the absence of such information, it is appropriate for this Court to rule on the merits of this motion.

Being duly advised of all the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED THAT** Mr. Black's motion for a temporary restraining order (Doc. No. 5) be **DENIED.**

Dated this 31<sup>st</sup> day of July, 2007.

s/Jeanne J. Graham

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JEANNE J. GRAHAM  
United States Magistrate Judge

#### **NOTICE**

Pursuant to Local Rule 72.2(b), any party may object to this report and recommendation by filing and serving specific, written objections by August 17, 2007. A party may respond to the objections within ten days after service. Any objections or responses filed under this rule shall not exceed 3,500 words. The District Court shall make a de novo determination of those portions to which objection is made. Failure to comply with this procedure shall operate as a forfeiture of the objecting party's right to seek review in the United States Court of Appeals for the Eighth Circuit.